U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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DATE: APR 2 3 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director, California Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this blanket petition seeking continuing approval of itself and its subsidiaries as qualifying organizations for the purpose of transferring employees to the United States as L-1 nonimmigrant intracompany transferees pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Delaware corporation, is engaged in computer aided design engineering and development. It states that it is the parent company of four wholly-owned subsidiaries, including: (1) Cambric Limited (Bahamas); (2) Cambric Consulting SRL, located in Romania; (3) Cambric GmbH, located in Germany; and (4) Cambric Services, LLC, located in Armenia.

The director denied the blanket petition after concluding that the petitioner meets none of the three eligibility conditions set forth at 8 C.F.R. § 214.2(l)(4)(D), of which at least one must be satisfied in order for the requested extension to be granted. Specifically, the director observed that there is no record that the petitioner has obtained approval of at least 10 "L" managers, executives, or specialized knowledge professionals during the previous 12 months; no evidence that the petitioner's income from U.S. operations is $25 million; and no evidence that the petitioner employs a United States workforce of at least 1,000 employees.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-290B, Notice of Appeal or Motion, counsel for the petitioner states:

> The Petitioner is filing this appeal to protect its rights. At the time the Blanket Petition was filed, [the petitioner] had 07 L-1 visas approved during the immediately preceding one year period. In addition, applications for extension of stay on several cases had been denied and were under Appeal and remain so. It is respectfully submitted that [if] these Appeals are sustained, the Petitioner will have met the requirements for extending the Blanket L visa petition. The relevant case numbers are attached as an additional exhibit.

Counsel attaches two charts to the appeal. One chart provides information regarding seven individual and blanket petition approvals for L-1B specialized knowledge employees granted during the 12 months preceding the filing of the petition. The second chart identifies four individual L-1B petitions denied by U.S. Citizenship and Immigration Services (USCIS) during the same time period. The petitioner indicates that it appealed these decisions to the AAO and that the appeals remained pending at the time of filing. The AAO notes that this office dismissed two of these four appeals (WAC1002550943 and WAC1000850281) in February 2012.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United

States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

To establish eligibility for approval of a blanket "L" petition, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. The regulation at 8 C.F.R. § 214.2(l)(4) provides the following:

> (i) A petitioner which meets the following requirements may file a blanket petition seeking continuing approval of itself and some or all of its parent, branches, subsidiaries, and affiliates as qualifying organizations if:
>
> (A) The petitioner and each of those entities are engaged in commercial trade or services;
>
> (B) The petitioner has an office in the United States that has been doing business for one year or more;
>
> (C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and
>
> (D) The petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or have a United States work force of at least 1,000 employees.

The regulation at 8 C.F.R. § 214.2(l)(14)(iii)(A) sets for the requirements for an extension of an approved blanket petition:

> A blanket petition may only be extended indefinitely by filing a new Form I-129 with a copy of the previous approval notice and a report of admissions during the preceding three years, a list of the aliens admitted under the blanket petitioner during the preceding three years, including positions held during that period, the employing entity, and the dates of initial admission and final departure of each alien. The petitioner shall state whether it still meets the criteria for filing a blanket petition and shall document any changes in approved relationships and additional qualifying organizations.

II. Discussion

The sole issue the director addressed is whether the petitioner continues to meet the regulatory requirements for filing a blanket petition, specifically, at least one of the three conditions set forth at 8 C.F.R. § 214.2(l)(4)(i)(D).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 22, 2010. The petitioner submitted evidence that it was previously granted blanket petition approval for the period February 23, 2007 through February 22, 2010.

The petitioner stated on the Form I-129 that it has 321 employees and gross annual income of $14.7 million. Therefore, the petitioner did not claim that it qualifies to file a blanket petition based on annual U.S. sales of at least $25 million or a U.S. workforce of at least 1,000 employees. *See* 8 C.F.R. § 214.2(l)(4)(i)(D).

Rather, in its letter dated December 14, 2009, the petitioner claimed eligibility "based on the number of L1 visas processed in the twelve months preceding the submission of our blanket L1 visa renewal application." The petitioner's letter identified 11 individual and blanket L-1B petitions adjudicated within the twelve months preceding the filing of the petition on February 22, 2010. The petitioner provided copies of two L-1 visas granted under its initial blanket petition, as well as copies of Form I-797A Approval Notices for five L-1B extensions approved by USCIS during the relevant time period.

The director denied the petition on March 16, 2010, concluding that the petitioner failed to establish that it meets at least one of the conditions set forth at 8 C.F.R. § 214.2(l)(4)(i)(D), and is therefore not eligible to file a blanket petition.

In denying the petition, the director noted that the petitioner's 2008 tax returns showed that its annual sales were $14.7 million, and that the petitioner claims only 321 workers. As such, the director determined that the petitioner failed to establish that it has domestic U.S. annual sales of at least $25 million or a U.S. workforce of at least 1,000 employees. The petitioner does not object to these findings on appeal.

The director further determined that the petitioner obtained approvals for only seven "L" workers in the 12 months preceding the filing of the petition, and therefore failed to satisfy the regulatory requirement at 8 C.F.R. § 214.2(l)(4)(i)(D).

On appeal, counsel for the petitioner concedes that the petitioner obtained approvals for only seven "L" workers during the relevant 12-month time period. Counsel notes that USCIS denied four L-1B petitions during this same time period and the petitioner appealed these denials. Counsel asserts that "[if] these Appeals are sustained, the Petitioner will have met the requirements for extending the Blanket L visa petition."

Counsel's assertions are not persuasive. The critical facts to be examined are those that existed at the actual time of filing the petition. It is a long-established rule in visa petition proceedings that a petitioner must establish eligibility as of the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The plain language of the regulation at 8 C.F.R. § 214.2(l)(4)(i)(D) states that the petitioner may establish eligibility to file a blanket L petition by demonstrating that "[t]he petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized

knowledge professionals during the previous 12 months." Here, the petitioner concedes that it did not obtain approval of ten or more "L" managers, executives or specialized knowledge professionals during the 12 months preceding the filing of its request to extend its blanket petition, nor did it otherwise satisfy the conditions of 8 C.F.R. § 214.2(l)(4)(i)(D). Accordingly, the director properly denied the petition and the appeal will be dismissed.

The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.